

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

**COMMENTS OF ONVOY, INC. IN RESPONSE TO PETITIONS FOR
RECONSIDERATION**

Onvoy, Inc. (“Onvoy”), through its undersigned counsel, hereby submits comments in the above-captioned rulemaking proceedings to address arguments raised by Sprint Nextel Corporation (“Sprint”) seeking clarification and reconsideration of the access stimulation rules adopted in the Commission’s *ICC/USF Reform Order*.¹ Not only are many of these arguments

¹ *In re Connect America Fund; A National Broadband Plan For Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order & Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*ICC/USF Reform Order*” or “*Order*”).

inappropriate to raise in a petition for reconsideration, but they also lack merit, and should therefore be denied by the Commission.

I. THE COMMISSION SHOULD DENY SPRINT'S PETITION FOR RECONSIDERATION AND CLARIFICATION ON PROCEDURAL GROUNDS.

The majority of arguments raised in Sprint's Petition for Reconsideration and Clarification (the "Sprint Petition")² are inappropriate to raise in a petition for reconsideration.³ The Commission has held that petitions for reconsideration may not be used to reargue points previously advanced and rejected.⁴ Under the Commission's rules, even a petition for reconsideration that raises new arguments will only be granted if it relies on new facts that (1) relate to events that occurred or circumstances that changed *after* the last opportunity to present them to the Commission; (2) were unknown to the petitioner until after his last opportunity to present them; or (3) are deemed by the Commission to be in the public interest to consider.⁵ The arguments raised in the Sprint Petition fail to meet these criteria.

First, some of the arguments in the Sprint Petition have already been made to – and rejected by – the Commission. For example, Sprint asks the Commission to clarify that, under the *Order*, "[i]f an entity does not qualify as an end user under the terms of [a] LEC's access

² Petition for Reconsideration and Clarification of Sprint Nextel Corporation, WC Dkt. Nos. 10-90 *et al.* (Dec. 29, 2011).

³ *See, e.g.*, Response of Northern Valley Communication, LLC to Petition for Reconsideration and Clarification of Sprint Nextel Corporation, WC Dkt. Nos. 10-90 *et al.*, at 3-6 (Jan. 26, 2012) (discussing why the Sprint Petition is procedurally improper).

⁴ *See In re Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability*, Fourth Order on Reconsideration, 22 FCC Red. 8047, ¶¶ 5, 11 (2007) (explaining that the Commission will not grant reconsideration to allow a petitioner to reiterate arguments already made, particularly when those arguments have been considered and rejected by the Commission).

⁵ *See* 47 C.F.R. § 1.429(b).

tariff, calls generated by that entity and terminated by the LEC in question do not constitute access traffic, and the access charges do not apply.”⁶ This argument is a reformulation of the argument Sprint made in its comments that traffic directed to access stimulators can never be subject to access charges,⁷ and the Commission declined to adopt it in the *Order*.⁸ Sprint also argues that the Commission should specify which price cap local exchange carrier (“LEC”) rate elements can be included in the composite rate for LECs engaged in access stimulation.⁹ Sprint also made this argument in its comments, and the Commission still chose not to make such a clarification in the *ICC/USF Reform Order*.¹⁰ Sprint should not be given a second bite at the apple by reframing previously made arguments that were not adopted in the *ICC/USF Reform Order* as issues for “clarification,” particularly when Sprint has not and cannot point to changed circumstances or new events that would warrant reconsideration of these arguments.

Second, Sprint raises new arguments that it did not make during the allotted comment period, but, contrary to the Commission’s rules, these arguments do not rely on new events or changed circumstances since that period expired. For example, Sprint asks the Commission to clarify that the statutory definition of “telecommunications services” forecloses access charges from being applied to tariffs associated with an entity to which a LEC does not provide

⁶ See Sprint Petition at 4.

⁷ See Section XV Comments of Sprint Nextel Corporation, WC Dkt. Nos. 10-90 *et al.*, at 9-11 (Apr. 1, 2011) (“Sprint Comments”).

⁸ See *ICC/USF Reform Order* ¶ 672.

⁹ See Sprint Petition at 6.

¹⁰ See Sprint Comments at 16 (“[I]f the Commission adopts its proposed trigger mechanism, it must specify that at most, the benchmark may include only the interstate BOC/independent ILEC local switching rate element.”).

“telecommunications for a fee.”¹¹ Sprint also had ample opportunity to raise this proposal prior to the *Order*’s release. Nothing has changed with respect to this statutory definition or the Commission’s interpretation thereof since the last opportunity to comment. Accordingly, Sprint’s failure to raise this proposal earlier justifies its rejection on procedural grounds.

II. THE COMMISSION SHOULD REJECT MERITLESS ARGUMENTS BY SPRINT SEEKING CLARIFICATION OF THE ACCESS STIMULATION RULES.

Even if the Commission decides to consider the merits of Sprint’s arguments, it should reject them as contrary to the logic of the *Order* and sound public policy.

The Commission should reject the so-called “clarifications” sought by Sprint of the *ICC/USF Reform Order*. First, Sprint requests that the Commission “clarify” that, under the holdings in the *Farmers*¹² line of cases, “[i]f an entity does not qualify as an end user under the terms of the LEC’s access tariff, calls generated by that entity and terminated by the LEC in question *do not constitute access traffic, and access charges do not apply*” under the *ICC/USF Reform Order*.¹³ This proposal mischaracterizes the highly factual determination in *Farmers* by suggesting it was intended to usurp, rather than complement, the Commission’s general access

¹¹ See Sprint Petition at 5.

¹² *Qwest Commc’ns Corp. v. Farmers & Merchants Mut. Tel. Co.*, Memorandum Opinion & Order, 22 FCC Rcd. 17973 (2007) (“*Farmers I*”); *Qwest Commc’ns Corp. v. Farmers & Merchants Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd. 14801 (2009) (“*Farmers II*”), *aff’d*, *Farmers & Merchants Mut. Tel. Co. v. FCC*, No. 10-1093 (D.C. Cir. Dec. 30, 2011).

¹³ See Sprint Petition at 4 (emphasis added).

stimulation rules.¹⁴ Adopting such a rule is inappropriate, particularly for providers of stand-alone tandem switched access services, which provide access service but have no “end users.”

In the *Farmers* cases, the Commission interpreted the specific terms of the Farmers’ tariff and applied them to the set of facts at issue in Farmers’ dispute with Qwest. The holding reached by the Commission based on this analysis cannot be automatically extended to other carriers whose tariffs contain different language than the Farmers’ tariff. Nor can it be extended in rote fashion to different factual circumstances. For example, providers of stand-alone tandem switched access services do not serve the called or calling party and do not have end user customers. Collection of access charges by such providers should not depend on whether traffic traversing their networks originates from or terminates to an entity that qualifies as an end user under the downstream LEC’s tariff.

It is clear therefore that Commission’s prior individual adjudication decisions do not modify the *ICC/USF Reform Order*, as Sprint suggests. In any event, the Wireline Competition and Wireless Telecommunications Bureaus addressed Sprint’s apparent concern by explaining in a recent order that the *ICC/USF Reform Order* “complements” and does not overturn or supersede prior access stimulation adjudications.¹⁵ The Bureaus’ clarification is more than sufficient and should not be further altered as Sprint proposes.

¹⁴ See *Farmers II*, 24 FCC Rcd. 14801, ¶ 26 (“Because we find that the conference calling companies were not ‘end users’ within the meaning of Farmers’ tariff, Farmers’ transport of traffic did not constitute ‘switched access’ under the tariff.”).

¹⁵ See *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Order, WC Dkt. Nos. 10-90 *et al.*, DA 12-147, ¶ 25 (WCB & WTB Feb. 3, 2012).

Second, Sprint argues that the Commission should clarify that the definition of “telecommunications service” forecloses application of access charges to traffic associated with an entity to which a LEC does not provide “telecommunications for a fee.”¹⁶ The Commission should not do so. Such a clarification would be contrary to the logic of the *Order*, which allows access charges for the transmission of VoIP traffic despite the fact that retail VoIP service has *not* been classified as a “telecommunications service.” Further, Sprint’s proposed clarification fails to account for providers of stand-alone tandem switched access service, which, as discussed above, provide access service but do not have a relationship with end users. Because their only customers are the interexchange carriers with which they connect, such tandem switched access providers have no ability to monitor or affect the relationship between a downstream LEC and that LEC’s customers, and thus have no way of knowing what services are ultimately being provided to those end users. Providers of stand-alone tandem switched access should not therefore be subject to the Commission’s general prohibition against the collection of tandem switched access charges for calls to and from parties that are not purchasers of “telecommunications services.”¹⁷

Third, Sprint argues that the Commission should clarify which price cap LEC rate elements can be included in the composite benchmark rate applicable to carriers engaged in

¹⁶ See Sprint Petition at 5-6.

¹⁷ It is also notable that section 51.903(d) of the Commission’s rules, which defines “end office access service,” does not make the provision of such access service contingent on serving “end users” or providing end users with a “telecommunications service.” See, e.g., 47 C.F.R. § 51.903(d)(2) (defining end office access service as “[t]he routing of interexchange telecommunications traffic to or from the called party’s premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used”). This further confirms that Sprint’s proposed clarification is inconsistent not only with the *Order*, but also with the Commission’s rules, which do not require a LEC to have “end users” to collect valid access charges.

access stimulation.¹⁸ Again, such a clarification is unnecessary. As Sprint concedes,¹⁹ the Commission has already determined that a benchmarking LEC cannot include in its rate the costs for services it does not provide and that it must cap its access charges to the level of an incumbent LEC.²⁰ Sprint fails to explain why any further clarification of this rule is necessary. The Commission should not alter its current standards, which provide benchmarking LECs with the flexibility to adopt efficient rate structures while at the same time remaining at or below the benchmark rate level. Any further restrictions would only increase a benchmarking LEC's costs of compliance without yielding any countervailing benefit to consumer welfare.

III. CONCLUSION.

For the foregoing reasons, the Commission should deny Sprint's requests for clarification discussed above relating to the access stimulation rules adopted in the *ICC/USF Reform Order*.

Respectfully submitted,

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¹⁸ See Sprint Petition at 6-7.

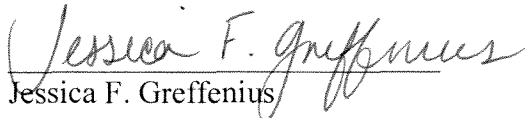
¹⁹ See *id.* at 6 n.12.

²⁰ See *In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, ¶ 55 (2001); *In re Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report & Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, ¶ 21 (2004).

CERTIFICATE OF SERVICE

I, Jessica F. Greffenius, hereby certify that on February 9, 2012, I caused a true and correct copy of the foregoing Comments of Onvoy, Inc. in Response to Petitions for Reconsideration to be served by overnight courier on the following party:

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